

REMARKS

This is in response to the Office Action of December 12, 2007. Claims 1-13 are currently pending in the present application, wherein claims 1 and 13 are independent. At the outset, Applicants wish to thank the Examiner for considering the references cited in the Information Disclosure Statement filed on November 9, 2007.

In the Office Action, the Examiner (1) rejected claims 1-5, 8-11 and 13 under 35 U.S.C. 103 as being unpatentable over Elson et al. (US 4,643,389); (2) rejected claim 6 under 35 U.S.C. 103 as being unpatentable over Elson in view of Baumdicker et al. (US 6,298,526), (3) rejected claim 7 under 35 U.S.C. 103 as being unpatentable over Elson in view of Stephens (US 4,193,174), and (4) rejected claims 1-5, 8-12 and 13 under 35 U.S.C. 103 as being unpatentable over Utterberg (US 6,089,527) in view of Elson. For the reasons set forth below, Applicants respectfully submit that the pending claims would not have been obvious in view of the cited art.

Claims 1-5, 8-11 and 13 Would Not Have Been Obvious Over Elson et al. (US 4,643,389)

First, Applicants turn to the rejection of claims 1-5, 8-11 and 13 under 35 U.S.C. 103 as being unpatentable over Elson. Applicants respectfully submit that independent claims 1 and 13 and the respective dependent claims would not have been obvious in view of the cited reference. Not only does the Office expressly state that Elson does not teach the claimed clamp, but the disclosure of Elson is also clearly contrary to the claimed subject matter and therefore does not render the claimed subject matter obvious, as described in further detail below.

Specifically, claim 1 is directed to a flow control clamp comprising a flexible body having a first leg and a second leg disposed in a general facing relationship when in a

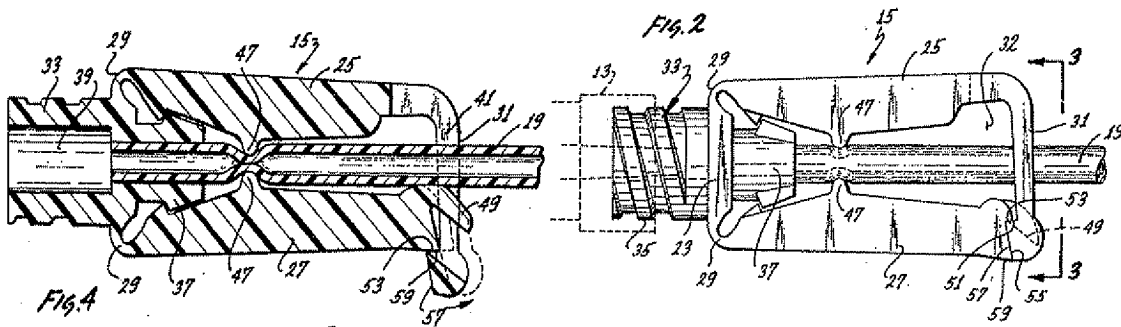
first spaced apart position and in a second closed position, the legs being movable from the first position to the second position. Claim 1 further recites a pair of apertures in the body for receiving a flexible tube therethrough. Finally, claim 1 recites at least one tube contacting member carried by one of the legs for clamping a tube when the legs are in the closed position. The first and second legs are adapted to irreversibly secure the legs together in the second closed position.

Similarly, independent claim 13 recites a flow control clamp and tube comprising a flexible body having a first portion and a second portion wherein the first portion and second portion are movable from a first open position to a second closed position. Claim 13 further recites a flexible tube extending between the first and second portions and at least one tube contacting member carried by one of the portions for compressing the tube when the portions are in the second closed position such that fluid flow through the tube is substantially prevented. The first and second portions are adapted to irreversibly maintain the second closed position.

Applicants respectfully submit that the flow control clamp recited in claims 1 and 13 is not disclosed or even contemplated in the Elson patent. Specifically, Elson does not disclose first and second legs (or first and second portions as recited in claim 13) including surfaces disposed to irreversibly secure the legs together in a closed position. In fact, the Office specifically acknowledges this fact, and states in the Office Action that “Elson...does not specifically disclose that the legs are adapted to irreversibly secure the legs together in the closed position.”

Indeed, Elson repeatedly teaches throughout its disclosure that body members (arms) 25, 27 are reversibly closable (and openable) – meaning they can easily be moved from a clamping position to a releasing position in which arms 25 and 27 are

movable away from each other. In one example, Elson states that “arms [25] and [27] are relatively movable toward each other to a clamping position to clamp the tube and relatively movable away from each other to a releasing position in which the clamping members 47 impose a lesser restriction to flow which may be no restriction through the tube [19]” (emphasis added). See col. 3, lines 55-65.



The clamping and releasing positions of the Elson clamp can also be seen in exemplary Figures 2 and 4, reproduced above. As seen here, arms 25 and 27 are movable between a clamping position (in which the clamping members 47 tightly compress the tube 19 to block flow of fluid therethrough (Figure 4) and a releasing position in which fluid can flow through tube 19 (Figure 2)). See col. 3, lines 48-57. Once the clamp is in a clamping position, Elson further describes that “to move the arms 25 and 27 back to the releasing position, the physician pushes with his thumb...so that the resilience of the hinge 29 can move the arm 27 back to the releasing position of FIG. 2.”

Thus, the Office cannot fairly ignore the numerous and explicit statements as to the reversibility of the Elson clamp. Furthermore, Elson even emphasizes the ease by which this “reversibility”, or capability to repeatedly move between a clamping and a releasing position, can be accomplished! For example, Elson states that:

“The clip 15 can be used to clamp and release the tube 19 as may be desired for whatever medical procedure is to be carried out.” See col. 4, lines 41-43.

"With the clip 15 in the releasing position of FIG. 2, the syringe 13 can be operated to inflate the balloon 17. Thereafter, the clip 15 can be moved to the clamping position of FIG. 4...and following this, the clip 15 is returned to the releasing position of FIG. 2." See col. 4, lines 42-54.

"The clip 15 can be manually moved between the clamping and releasing positions with only one hand." See col. 4, lines 55-56.

In short, Elson describes a clamp where selective opening and closing is the desired goal. This is in stark contrast to the clamp claimed herein where movement from the second closed position back to an open position is not desired, is discouraged, and is prevented (in the normal course of operation).

While Applicants believe that it is abundantly clear from the disclosure of Elson that the clamp disclosed therein is reversible (and desirably so), the Office further suggests that Elson describes a "positive lock" that holds the clamp shut, making the clamp of Elson "irreversible." However, if read closely, the disclosure of Elson regarding a "positive lock" is not a reference to irreversibly locking a clamp in a closed position to restrict fluid flow in a tube. Instead, it is simply a reference to the arms being in a facing relationship or "loop" configuration (instead of a flat configuration as shown in Figure 6). Even when the clamp is in the "positive lock" or closed loop configuration, the arms still are reversibly closable: "this positive lock is effective when the arms are in either the releasing or clamping positions. See col. 1, line 68 through col. 2, line 2. Thus, there is absolutely nothing in Elson to suggest "irreversible" closure or securement of a clamp as claimed herein, and the Office cannot ignore that which Elson clearly teaches, and that is a reversibly openable clamp!

In the Office Action, it has also been suggested that it would have been obvious to modify the clamp of Elson with the ability to "permanently lock the clamp in order to prevent the clamp from accidentally coming unattached from the tubing member during

a medical procedure”. This argument, however, misses the point. The pending claims are directed to a flow control clamp for substantially preventing fluid flow through tubing when in an irreversibly closed position. Whether or not Elson discloses a clamp that is permanently attached to tubing, at the end of the day, it would still be a reversible clamp (e.g. movable between the open and closed positions) contrary to the invention claimed herein. For at least these reasons, independent claim 1 and 13 and the respective dependent claims would not have been obvious over the Elson patent.

Claims 1-5, 8-12 and 13 Would Not Have Been Obvious Over Utterberg (US 6,089,527) in view of Elson

Next, Applicants turn to the rejection of claims 1-5, 8-12 and 13 under 35 U.S.C. 103 as being unpatentable over Utterberg (US 6,089,527) in view of Elson, and submit that independent claims 1 and 13 the respective dependent claims would not have been obvious over Utterberg either alone or in combination with Elson.

Specifically, Utterberg does not describe first and second legs (or portions as defined in claim 13) adapted to be irreversibly secured together in a closed position. Instead, Utterberg discloses a squeeze clamp for tubing, which (like Elson) is reversible between an open and closed position, and the Office has expressly acknowledged this fact – that is, the Office has indicated that “Utterberg does not disclose that the first and second surfaces are adapted to irreversibly secure the legs together in a closed position.”

Thus, even if one were to combine the reversible clamp described by Utterberg with the reversible clamp of Elson, the resulting device would still be a reversible clamp. Thus, combining Utterberg and Elson would still not have the features of the claimed irreversible flow control clamp. Thus, the pending claims would not have been obvious

over Utterberg either alone or in combination with Elson.

Claims 6 and 7 Would Not Have Been Obvious Over the Cited References

Next, Applicants turn to the rejection of dependent claims 6 and 7 over Elson in view of the '526 patent to Baumdicker and the '174 patent to Stephens, respectively.

In this regard, Applicants note that claims 6 and 7 are dependent on claim 1. Applicants submit that, for at least the reasons stated above that claim 1 is patentable over Elson, which are incorporated herein by reference, claims 6 and 7 also would not have been obvious over Elson either alone or in combination with Baumdicker and/or Stephens.

Power of Attorney and Change of Correspondence Address

Finally, Applicants note that a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address for the present application was submitted on August 1, 2007. However, it appears that none of the changes requested in the above-identified submission have been implemented, nor have the USPTO's records been updated to reflect such changes. In particular, the most recent Office Action, mailed December 12, 2007, was mailed to the wrong address and identified the wrong customer number. Applicants respectfully request that the Examiner update the correspondence address, customer number and power of attorney of record associated with the present application in accordance with the previous request, submitted on August 1, 2007.

CONCLUSION

For the reasons described above, Applicants respectfully submit that claims 1-13 are novel and would not have been obvious in view of the cited art. Applicants respectfully request that the claims be reconsidered and allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew G. Kolomayets', written over a horizontal line.

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